

**EXECUTIVE SUMMARY
OF THE
OFFICE OF THE CHILD ADVOCATE
PRELIMINARY REPORT**

**JACKSON INVESTIGATION
An Examination of Failures
Of New Jersey's Child Protection System
And Recommendations for Reform**

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February 12, 2004

On September 26, 2003, the Office of the Child Advocate (the “OCA”) was created by statute to, among other things: investigate any State agency’s response to an allegation of child abuse or neglect; and review and make recommendations concerning the procedures established by any State agency providing services to children who receive child protective or permanency services.

On October 10, 2003, fifteen days after the launch of the OCA, the Collingswood Police Department discovered that Raymond and Vanessa Jackson’s four adopted sons (“B.J., K.J., T.J. and M.J.”) were severely malnourished. DYFS had placed all four boys in the Jackson household as foster children and DYFS subsequently approved and assisted in their adoptions by the Jacksons. On October 24, 2003, DHS first advised the OCA of the discovery of the Jackson boys and the extent of DYFS’ recent involvement with the family: DYFS employees had been in the Jackson household many times in the past several years to monitor a pre-adoptive foster child, ten-year-old B.P. Earlier that day, the Camden County Prosecutor’s Office (the “CCPO”) and the Collingswood Police Department had arrested Raymond and Vanessa Jackson for the alleged systematic starvation of B.J., K.J., T.J., and M.J.

THE OCA INVESTIGATION

Pursuant to its statutory jurisdiction and obligations, the OCA promptly commenced an investigation to determine whether any systemic flaws in the child welfare system contributed to the failure to discover the apparent starvation of the Jackson boys. The OCA retained Latham & Watkins as *pro bono* special counsel and, with Latham & Watkins’ assistance, reviewed and analyzed all aspects of the child

welfare system's interactions with the Jackson household from 1991 (when the Jacksons were first approved to become foster parents) through October 2003.

This investigation included a review of, among other things, DYFS regulations, policies, casework practice, and compliance with its own standards in connection with the evaluation of the Jackson residence as a foster and adoptive household; the supervision of B.P., a foster child placed in the Jackson household who was pending adoption on October 10, 2003; the performance of a safety assessment of the Jackson household pursuant to the settlement agreement in *Charlie and Nadine H. v. McGreevey*, Civ. Action No. 99-3678 (SRC); and collateral systems, including schools, municipal government, and healthcare providers. The OCA issued subpoenas and obtained thousands of pages of documentary evidence, including records from DHS, DYFS, schools, and medical providers. The OCA also conducted depositions of senior DHS and DYFS employees.

The OCA's investigation focused on systemic flaws, rather than the potential culpability of the Jacksons or of the DYFS employees who interacted with the Jackson household; those issues are the subject of the CCPO's pending criminal investigation. Mindful of the CCPO's criminal investigation and the OCA's statutory obligations not to interfere with such a pending investigation, the OCA was careful not to proceed in any manner that could jeopardize the CCPO's investigation or infringe upon the rights of the Jacksons, DYFS employees who may be subjects of the CCPO's investigation, or the four boys.

THE JACKSON HOUSEHOLD

Once in the Jackson household, each of the boys became severely malnourished and, shortly after each boy was adopted, the Jacksons discontinued providing any medical care whatsoever. Years of neglect and abuse profoundly retarded the development of each of the boys:

- **In December 1991, seven-year-old B.J. weighed forty-three and three quarter pounds and stood forty-eight and one quarter inches tall. Twelve years later, when police removed him from the Jackson household in October 2003, B.J. weighed only forty-five pounds and stood four feet tall.**
- **In the fall of 1996, seven-year-old K.J. weighed thirty-eight pounds and stood three feet nine inches tall. Seven years later, when police removed him from the Jackson household in October 2003, K.J. weighed only forty pounds and stood four feet tall.**
- **On March 8, 1995, seventeen-month-old T.J. weighed twenty-eight pounds and was thirty-one and one quarter inches long. Eight years later, when police removed him from the Jackson household in October 2003, the almost ten-year-old T.J. weighed the same twenty-eight pounds and was thirty-eight inches tall.**
- **On August 10, 1995, seventeen-month-old M.J. weighed seventeen pounds, eight ounces and was twenty-nine inches long. Eight years later, when police removed him from the Jackson household in October 2003, the almost ten-year-old M.J. weighed only twenty-two pounds, ten ounces and was thirty-seven and one-half inches tall.**

After B.J., K.J., T.J. and M.J. were removed from the Jackson household they were provided with proper nutrition and care and they began to thrive:

- **By February 5, 2004, less than four months after being removed from the Jackson household, B.J. had gained thirty-seven pounds and had grown six and one half inches.** After extensive examination and testing, doctors have concluded that his low weight and small stature were not caused by any medical condition. His initial assessment was malnourishment, severe

anemia, and growth retardation. A medical geneticist later reported that he had acquired growth hormone deficiency and long standing emotional and physical neglect, including starvation. Reflux was ruled out and he has not exhibited ongoing bulimic activity.

- **By February 2, 2004**, also less than four months after being removed from the Jackson household, **K.J. had gained thirty-three pounds and had grown one and three quarter inches.** After extensive examination and testing, doctors have concluded that K.J.'s low weight and small stature were not caused by any medical condition. His initial assessment was malnutrition and growth retardation, and a nutritional therapy note diagnosed him with marasmus, failure to thrive, suspected neglect, and re-feeding syndrome risk. A medical geneticist has ruled out fetal alcohol syndrome, bone dysplasia, fracture, and rickets.
- **By February 2, 2004, T.J. had gained fifteen pounds and had grown three inches.** After extensive examination and testing, doctors have concluded that his low weight and small stature were not caused by any medical condition and a medical geneticist determined that his condition was compatible with a secondary growth hormone deficiency due to severe and prolonged psychosocial deprivation. The geneticist has ruled out fetal alcohol syndrome.
- **By February 2, 2004, M.J. had gained twenty-one pounds and had grown two and one eighth inches.** After extensive examination and testing, doctors have concluded that his low weight and small stature were not caused by any medical condition. Rather, M.J. was assessed as being malnourished, which resulted in growth retardation, and as having been subject to medical care neglect. In addition, a medical geneticist determined that his condition was compatible with a secondary growth hormone deficiency due to severe and prolonged emotional and physical neglect, including starvation. The geneticist has ruled out fetal alcohol syndrome.

These facts strongly suggest that B.J., K.J., T.J. and M.J. were systematically starved over many years. The issue, for purposes of the OCA's investigation is: how could the medical condition of these four boys apparently go unnoticed and uncorrected by DYFS over many years?

DYFS' SYSTEMIC FAILURE TO COMPLY WITH CERTAIN CRITICAL REGULATORY AND POLICY OBLIGATIONS

The OCA's investigation revealed that certain of DYFS' regulatory and policy obligations, particularly those relating to medical exams of household members, apparently were honored primarily in the breach. Compliance with these regulations might have prevented the malnutrition of the Jackson boys; at worst, compliance would likely have uncovered the malnutrition several years earlier.

Foster Home Licensing

Before DYFS can place a child in a foster home, the foster parents and the foster home must successfully complete an evaluation process. Although between 1991 and the present, reorganizations within DYFS from time to time shifted the responsibility for foster home approvals and re-approvals, and ultimately the approval process became a licensing process, certain key administrative regulations and policies remained substantially the same. *N.J.A.C. 10:122C* sets forth the regulations concerning the approval of a foster home. The approval process requires, among other things, medical references completed by a physician and in-person interviews for all household members. The regulation governing the annual reevaluation was codified at *N.J.A.C. 10:122C-2.14*, which provides in relevant part that “[a] Division representative shall reevaluate annually each approved foster home based on the standards in this chapter.” (emphasis added). Thus, the regulations require that DYFS obtain medical references and in-person interviews for all household members annually.

DYFS never followed its own regulations with regard to annual medical references for Jackson household members after 1991. Indeed, the boys never saw doctors for medical exams after 1997. Had DYFS obtained medical references it would have ensured that a physician examined each of the four boys, which likely would have uncovered their ongoing malnutrition and lack of development. Had DYFS conducted in-person interviews it would also have increased the likelihood of discovery of their malnutrition. However, four different DYFS employees who evaluated the Jackson household between 1991 and 2002 on eight different occasions failed to comply with regulations. **The fact that none of the DYFS employees who interacted with the Jackson household complied with the annual medical reference and in-person interview requirements portends so wide a berth between policy and practice as to render virtually impotent the administrative code. That gap calls into question DYFS' ability to ensure that its self-imposed regulatory requirements are properly interpreted and applied by the workers and supervisors responsible for enforcement.** Moreover, the fact that DYFS officials deposed by the OCA's attorneys did not even realize that there was a requirement to obtain medical references and interview other household members is compelling evidence that this failure was not limited to the Jackson household. **The distinction between policy and practice is so great as to make DYFS' written rules almost meaningless. It is, in the end, likely that these policies were written for a different system - for a system with adequate staffing, foster homes and medical services. Investigating whether or not workers failed to conform to specific rules has yielded the unsettling conclusion that many policies designed to protect children are not strictly adhered to at DYFS, or even**

fully understood in the DYFS offices, raising inevitable concerns that the system is too debilitated to support its own policies.

Minimum Visitation Requirement

DYFS is also required to visit regularly all children under its care, custody and supervision. *N.J.S.A. 30:4C-25; N.J.A.C. 10:133D-4*. For each child in out-of-home placement, DYFS establishes a “Minimum Visitation Requirement,” or “MVR,” to determine how frequently a caseworker must visit the child. After B.J., K.J., T.J., and M.J. were adopted, various DYFS employees conducted dozens of MVRs in connection with B.P.’s placement as a foster care child in the Jackson home. Based on the OCA’s investigation, it appears that those employees did not uncover the alleged malnutrition of the boys because, pursuant to DYFS practices, MVRs focus exclusively on the employee’s assigned foster child -- in this case, B.P. There is no requirement that a caseworker performing an MVR for a foster child investigate or even observe other members of the household (*e.g.*, B.J., K.J., T.J., and M.J.). That, coupled with frequent changes in DYFS caseworkers assigned to children in the Jackson household, promoted systemic myopia which likely resulted in the failure of any caseworker to investigate the obvious health problems of the four boys.

Adoption Regulations

Foster parents who have cared for a child continuously in their home for a period of two years or more may apply to DYFS to adopt the child. Regulations relating to the adoption of a child in foster care are applied and enforced by the Adoption Resource Centers (“ARCs”). The ARCs assume responsibility for children whose case

goal becomes adoption after attempts at reunification have failed. ARC caseworkers provide foster care services to children as well as facilitate the termination of parental rights and adoption processes.

Whenever a person applies to DYFS to adopt a child, DYFS' regulations require that it conduct a home study. *See, e.g., N.J.A.C. 10:121C-1.1(b) & 3.1(b).* A home study must include written medical reports on each applicant and all members of the household as well as joint and individual in-person interviews of all members of the applicant's household. *N.J.A.C. 10:121A-5.6(f)(11) & 5.6(e)(2)* (emphasis added).

B.J. was the first of the four boys adopted by the Jacksons. As each subsequent child was adopted, the regulations required DYFS to obtain a medical report for B.J. and conduct an in-person interview with him. Had DYFS complied with its regulatory obligations, B.J. would have been examined by a physician and interviewed on or about March 1997 in connection with the adoption of K.J. and M.J. He would have been examined and interviewed again on or about December 1997 in connection with the adoption of T.J., and on or about October 2000 in connection with the adoption of J.J. K.J. and M.J. would also have been examined by a physician and interviewed in December 1997, and K.J., M.J., and T.J. would also all have been examined and interviewed in October 2000. **Once again, DYFS' failure to comply with its regulatory obligations to obtain medical reports and conduct in-person interviews likely prevented discovery of the boys' medical conditions.**

Adoption Subsidy Program and Home Schooling

A combination of federal and state funding is available in the form of monthly subsidy payments to any adoptive parent of a special needs child or a child who is classified as “hard to place.” ARC caseworkers are responsible for administering DYFS’ adoption subsidy program. If a child is eligible, DYFS, through the ARC caseworker, and the adoptive parents enter into a written agreement. After the initial Adoption Assistance Agreement is executed, DYFS maintains ongoing responsibility to monitor the subsidy on an annual basis. In order to renew this subsidy annually, the adoptive parents need only certify in writing that they continue to provide at least half of the child’s financial support and that they understand the terms of the subsidy program. *See N.J.A.C. 10:121-2.2(g).* The subsidy recipient is required to provide no other information and DYFS does nothing to corroborate the certification.

Vanessa and Raymond Jackson applied for and received increased adoption subsidies based on the medical and/or dental conditions of B.J., K.J., T.J., and M.J. Every year the Jacksons signed and returned the post-adoption subsidy renewal forms and every year DYFS renewed the subsidies without question, based solely on the Jacksons’ representations that they continued to provide at least half of the financial support necessary for the four boys and that they understood the subsidy program. **Had DYFS required employees to obtain some documentation, such as, for example, federal income tax returns, the employees reevaluating the Jackson household would have learned the Jacksons reported approximately \$11,000 in income in 2001 on their tax returns, a far cry from the \$80,000 noted by the caseworker in October 2002.**

When a child is in foster care, DYFS is that child's legal guardian and DYFS must consent before the child's foster parent can home school the child. *See DYFS Field Operations Casework Policy and Procedures Manual*, § 1008.5. B.J. attended public school through the 1995 school year. In May of that school year, B.J.'s school contacted DYFS to report an allegation of abuse. The school also expressed concern about B.J.'s physical appearance, specifically his low weight, and observed that he always appeared hungry. DYFS investigated those allegations and concluded that they were unsubstantiated apparently without arranging for any medical exam. At the beginning of the next school year, Mrs. Jackson began to home school B.J. without first obtaining DYFS' approval. Indeed, Mrs. Jackson did not advise B.J.'s caseworker that she had begun home schooling until October 4, 1995, well into the next school year. **Despite the possibility that Mrs. Jackson withdrew B.J. because of the school's allegation of abuse the prior May, and the fact that she did so without obtaining DYFS' permission as required by DYFS policy, the caseworker did not question that arrangement. In fact, the only reason the caseworker eventually questioned that arrangement was because of an instruction from the supervisor after a case conference in January 1996. Even then, however, the caseworker did not object to home schooling.**

SAFETY ASSESSMENTS

According to a senior DHS employee, a safety assessment is "an assessment, right now, [of] the child's current status. Is that child in danger right now? So to make that assessment, you would need to be – you'd need to see that child right

now and see the people interacting with that child right now.” (A. Blake Dep., 41:2 to -7, Appendix B at 2). On October 23, 2003, DHS issued a press release that stated in relevant part:

The Division of Youth and Family Services (DYFS) has conducted face-to-face safety assessments on more than 14,000 children in foster care since June [DYFS undertook] an unprecedented effort to visit and evaluate all 14,393 children in substitute care [including those] placed in foster homes. (emphasis added)

The OCA’s investigation has revealed that DYFS’ public pronouncement was erroneous. Hundreds, if not thousands, of the safety assessments did not involve “right now” “face-to-face” “visits.” Rather, they involved little more than a review of documents memorializing routine visits with the child over the prior six to twelve months. The Jackson household was no exception. DYFS’ “safety assessment” on the Jackson household consisted of a caseworker reviewing file documents from at least the prior eight months, completing a form, and obtaining her supervisor’s signature on that form. DYFS did not require that caseworker to conduct a “right now” “face-to-face” “visit” specifically to assess the safety of the Jackson household. Had DYFS actually conducted such a visit and interviewed the foster child and the household members, DYFS might have uncovered the malnutrition of B.J., K.J. T.J., and M.J earlier.

PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

- Expand the revised safety assessment process to include all children under ARC supervision and ensure that contemporaneous, face-to-face visits occur with the child and all household members.
- Establish a medical continuum of coordinated care for foster children. Establish medical offices at DYFS District Offices and Adoption Resource Centers, responsible for tracking and reporting children’s health histories.

- Fully integrate DYFS case practice to ensure that critical case information is shared between and among offices, and that DYFS employees are aware of and comply with DYFS regulations to provide meaningful, holistic and uninterrupted services to all children in care.
- Provide an array of post-adoption supports, including the requirement that families who elect to apply for and are approved to receive an adoption subsidy ensure that a physical examination is completed for each child annually by a State-licensed pediatrician.
- Implement a comprehensive and ongoing Quality Assurance initiative that proactively audits and improves work with children and families.